

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

JASPER DOCKERY,

Petitioner,

v.

**Civil Action No. 5:06cv140
(Judge Stamp)**

JOE DRIVER, Warden,

Respondent.

OPINION/REPORT AND RECOMMENDATION

On October 18, 2006, the *pro se* petitioner filed a Petition for Writ of Habeas Corpus in the United States District Court for the District of Columbia (“D.C. Court”). Upon review, the D.C. Court determined that the petitioner sought habeas corpus relief pursuant to 28 U.S.C. § 2241. Moreover, the D.C. Court determined that because the petitioner was incarcerated at the Hazelton Penitentiary in Bruceton Mills, West Virginia, the case be transferred to this Court for all further proceedings.

Now before the Court is the respondent’s Motion to Dismiss, or in the Alternative, Motion to Transfer. In the motion, the respondent argues that the petitioner is not entitled to relief under § 2241 and requests that the petition be denied. In the alternative, the respondent argues that the petitioner is incarcerated at the United States Penitentiary in Pollack, Louisiana, and that this Court does not have jurisdiction to hear this case.

Upon a review of the respondent’s motion, it is clear that at the time this case was filed, the petitioner was incarcerated USP-Pollack. See dckt. 29-2, Ex. 1. Moreover, at the time the D.C. Court transferred this case, the petitioner was incarcerated at USP-Pollack. Id. A review of the

Bureau of Prisons inmate locator shows that the petitioner is still incarcerated at USP-Pollack. See <http://www.bop.gov/iloc2/LocateInmate.jsp>. Therefore, it is clear that at no time during the pendency of this case,¹ was the petitioner incarcerated within this district. Thus, this court lacks jurisdiction over the petitioner's claims for purposes of 28 U.S.C. § 2241, and this case should have been transferred to the Western District of Louisiana. See Rumsfield v. Padilla, 542 U.S. 426 (2004).

Because this court has never had jurisdiction over the petitioner's custodian, the undersigned recommends that the respondent's Motion to Transfer (dckt. 29) be **GRANTED** and this case be **TRANSFERRED** to the United States District Court for the Western District of Louisiana for all further proceedings. Any remaining motions, including the respondent's motion to dismiss on the merits, should be carried with the case.

Within ten (10) days after being served with a copy of this recommendation, any party may file with the Clerk of Court written objections identifying those portions of the recommendation to which objection is made and the basis for such objections. A copy of any objections should also be submitted to the Honorable Frederick P. Stamp, Jr., United States District Judge. Failure to timely file objections to this recommendation will result in waiver of the right to appeal from a judgment of this Court based upon such recommendation 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to send a copy of this Opinion/Report and Recommendation to the *pro*

¹ Prior to the filing of this case, the petitioner was incarcerated at USP-Hazelton, located in Bruceton Mills, West Virginia, from June 15, 2005 to July 18, 2006. On July 20, 2006, the petitioner was transferred to USP-Pollack. This case was filed in the D.C. Court on October 18, 2006, well after the petitioner's transfer.

se petitioner by certified mail, return receipt requested, to his last known address as shown on the docket. The Clerk is further directed to provide copies of this Opinion/Report and Recommendation to counsel of record via electronic means.

DATED: April 11, 2008.

John S. Kaull

JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE